IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

Crl.MC.No. 201 of 2007()

CP.110/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, NEYYATTINKARA

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PETITIONER: ACCUSED:

SANTHOSH, S/O. CHARIS @ KUNJUNNI,
THOPPIL VEEDU, MAMPAZHAKKARA,PERUMPAZHUTHOOR VILLAGE, NEYYATTINKARA.

BY ADV. SRI.G.SUDHEER

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 201 OF 2007

Dated this the 20th day of February, 2007

ORDER

The petitioner faces allegations under Sec.55(g) of the Kerala Abkari Act. After investigation, final report has been filed before the learned Magistrate by the police and, accordingly, cognizance has been taken and committal proceedings has been registered.

2. The crux of the allegations against the petitioner is that at 5.45 p.m. on 25/11/2002 he was found transporting jaggery and kareenja patta in an autorikshaw when he was intercepted by the police party. He allegedly abandoned the articles and took to his heels. These articles can be used for the purpose of manufacturing liquor and it is the case of the prosecution that the possession of these articles was for the purpose of manufacturing liquor and consequently the act of the accused is punishable under Sec.55(g) of the Abkari Act.

3. The learned counsel for the petitioner submits that the allegations against the petitioner are factually untrue and

false. That question cannot, of course, be resolved by this Court in proceedings under Sec.482 of the Cr.P.C.

4. Undaunted, the learned counsel for the petitioner submits that even if the entire allegations were accepted, there is nothing to indicate that any offence punishable under Sec. 55(g) of the Abkari Act has been committed by the petitioner. The mere fact that an article in his possession which is capable of many other methods of legal user can be used for the purpose of illicit manufacturing of liquor also cannot by itself expose a citizen to the charge under Sec.55(g) of the Abkari Act, submits counsel.

5. The learned counsel for the petitioner prays that the petitioner may not be relegated to seek discharge under Sec.227 of the Cr.P.C. That would cause unnecessary prejudice, hardship and loss to the petitioner as he will have to stand the proceedings before the Sessions Court, the offence being triable by a court of session. Inasmuch as the allegations do not constitute any offence, the extraordinary inherent jurisdiction available to this Court under Sec.482 of the Cr.P.C. may be invoked to bring the proceedings to premature termination.

This, in short, is the contention.

6. Sec.55(g) of the Abkari Act reads as follows:

> "55. **For illegal import, etc:-** Whoever in contravention of this Act or of any rule or order made under this Act
>
> (a) x x x x x
> (b) x x x x x
> (c) x x x x x
> (d) x x x x x
> (e) x x x x x
> (f) x x x x x
>
> (g) uses, keeps or <u>has in his possession any materials,</u> still, utensil, implement or apparatus <u>whatsoever for the purpose of manufacturing liquor</u> other than toddy or any intoxicating drug;
>
> shall be punishable. . . . . ."
>
> (emphasis supplied)

7. There cannot perhaps be a dispute that jaggery and kareenja patta which were allegedly seized from the possession of the petitioner can be used for the purpose of illicit manufacturing of liquor also. The short question is whether, in these circumstances, the offence under Sec.55(g) of the Abkari

Act is indicated prima facie as to direct the petitioner to fend for himself and claim discharge/acquittal before the Sessions Court at the stage of Sec.227 of the Cr.P.C. and later.

8. Possession of materials whatsoever for the purpose of manufacturing liquor is the crux or gravamen of the offence under Sec.55(g) of the Abkari Act. Such possession must prima facie be indicated to be "for the purpose of manufacturing liquor". The short question is whether there is sufficient allegations or materials to that effect in this case.

9. The learned Public Prosecutor was requested to marshal the facts in the Case Diary and submit before this Court whether there is any worthwhile allegation to indicate that such possession was for the purpose of manufacturing liquor. The learned Public Prosecutor, after perusing the C.D. elaborately, after taking time for the same, submits before this Court that there is absolutely nothing specific to indicate that the possession of jaggery and kareenja patta by the accused was for the purpose of manufacture of liquor at any specific place. The seizure witnesses have expressed the omnibus opinion that the articles were being carried for the purpose of manufacturing

illicit liquor. The officer who detected the crime does also appear to have entertained such an impression. It is crucial to note that the destination was not identified by the Investigating Officer. There is nothing to indicate that the petitioner was engaged in the manufacture of liquor at any other place and the articles were being conveyed to such place for the purpose of manufacturing liquor. The place of seizure does not also indicate or suggest such a purpose.

10. In short, possession simpliciter alone is proved. Of course, there is a further indication that the petitioner took to his heels when he was intercepted by the police. Many persons in this country may resort to that course when confronted by the police even while performing legitimate and legal pursuits. That circumstance, by itself, cannot lead to a ready inference even at the stage of taking cognizance that the articles in question were possessed for the purpose of illicit manufacture of liquor.

11. In short, there is no semblance of specific allegation which can indicate that the possession of the articles in question was for the purpose of manufacturing liquor. Possession

simpliciter of articles which can be used for the purpose of manufacturing liquor also cannot in the absence of cogent and probative indications be assumed to be possession for the purpose of manufacturing illicit liquor as to justify indictment under Sec.55(g) of the Abkari Act. I am, in these circumstances, persuaded to agree that this is an eminently fit case where premature termination of the proceedings by invocation of the extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C. shall be justified. Lest, there be any confusion and to disabuse any such incorrect impression which may be carried, I make it clear that it is not the law that possession of such materials by itself will not amount to an offence under Sec.55(g) of the Abkari Act. The crucial question is whether there is satisfactory allegations or materials to show that such possession was for the purpose of manufacturing liquor. I choose to invoke the jurisdiction under Sec.482 of the Cr.P.C. in this case for the crucial reason that there is no worthwhile allegation or circumstances to indicate or suggest that the possession of the articles in question was for the purpose of manufacturing liquor.

12. In the result:

(i) This Crl.M.C. is, accordingly, allowed.

(ii) C.P.No.110/05 pending before the Judicial Magistrate of the First Class-I, Neyyattinkara, against the petitioner is hereby quashed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge